

## REMARKS

Claims 1-13, 17-20, 22-23, 28 and 30-31 were examined. Claims 1 and 6 are amended. Claims 14-16, 21, 24-27, 29 and 32-72 are withdrawn.

The Patent Office rejects claims 1-2, 5-7, 17-20, 22-23, 28 and 30-31 under 35 U.S.C. §102(b). Reconsideration of the pending claims is respectfully requested in view of the above amendments and the following remarks.

### A. 35 U.S.C. §102(b): Rejection of Claims 1-2, 5-7, 17-20, 22 & 31

The Patent Office rejects claims 1-2, 5-7, 17-20, 22 and 31 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,090,096 of St. Goar et al. (St. Goar). St. Goar describes a cardioplegia catheter configured to extend into the ascending aorta with a proximal portion of the shaft extending into a left chamber of the heart through the aortic valve and out of the heart through a penetration in a wall thereof. Referring to Figure 1 and Figure 8, the catheter includes shaft 22, 82, occlusion balloon 28, 84 at a distal end of shaft 22,82 and, in Figure 8, ventricular balloon 110 spaced proximally from occlusion balloon 84.

Claims 1-2, 5-7, 17-20, 22 and 31 are not anticipated by St. Goar, because St. Goar does not describe an apparatus including a tether, an aptation device coupled to the tether at a position between the proximal end and the distal end, and a fastening member including a projection capable of anchoring the fastening member to a wall of a ventricle of a heart, and wherein the distal end of the tether extends beyond a distal end of the aptation device. The catheters of St. Goar described with reference to Figures 1 and 8 do not include a fastening member including a projection capable of anchoring the fastening member to a wall of a ventricle of the heart. Applicants respectfully request that the Patent Office withdraw the rejection to claims 1-2, 5-7, 17-20, 22 and 31 under 35 U.S.C. §102(b) as anticipated by St. Goar.

### B. 35 U.S.C. §102(b): Rejection of Claims 1-2, 5-7, 17-20, 22-23, 28 & 30-31

The Patent Office rejects claims 1-2, 5-7, 17-20, 22-23, 28 and 30-31 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,261,222 of Schweich, Jr. et al. (Schweich).

Schweich describes an apparatus including a tension member for drawing at least two walls of a heart chamber toward each other. In the embodiment referenced by the Patent Office, splint 16 includes proximal and distal anchors 20. See Figure 19.

Claims 1-2, 5-7, 17-20, 22-23, 28 and 30-31 are not anticipated by Schweich, because Schweich does not describe an apparatus including a tether, an aptation device coupled to the tether at a position between the proximal end and the distal end wherein the distal end of the tether extends beyond a distal end of the aptation device. As noted above, Schweich discloses a splint having anchors at each end. Schweich does not disclose an aptation device coupled between the proximal end and the distal end of the splint wherein the distal end of splint extends beyond a distal end of an aptation device. Further, it is not clear in Schweich that any of the devices mentioned in column 12, line 67 through column 13, line 8 (e.g., strain gauge, pressure gauge) can constitute an aptation device as claimed or would be positioned between the proximal and distal ends of the splint. Applicants respectfully request that the Patent Office withdraw the rejection to claims 1-2, 5-7, 17-20, 22-23, 28 and 30-31 under 35 U.S.C. §102(b) as anticipated by Schweich.

#### C. Allowable Subject Matter

The Patent Office indicates that claims 3-4 and 8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in dependent form. Applicants believe claims 3-4 and 8-13 are in a condition for allowance in view of the above amendments and remarks. Applicants respectfully request that the Patent Office withdraw the objection to claims 3-4 and 8-13.

### CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

### PETITION FOR EXTENSION OF TIME

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on March 3, 2006, Applicants respectfully petition the Commissioner for a one (1) month extension of time, extending the period for response to July 3, 2006. The Commissioner is hereby authorized to charge payment to Deposit Account No. 02-2666 in the amount of \$120 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(1) large entity.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: 6/29/06

William T. Babbitt  
William Thomas Babbitt, Reg. No. 39,591

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, California 90025  
Telephone (310) 207-3800  
Facsimile (310) 820-5988

#### CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

Nedy Calderon  
Nedy Calderon

6/29/06  
Date